

# UTAH SCHOOL LAW UPDATE

## Utah State Office of Education

January 2012

#### **Inside this issue:**

#### ETHICS REVIEW-One Year Later

Beginning in January 2011, all prospective educators, all educators who were scheduled for their 5 year renewal process and all out-of-state applicants for a Utah teaching license completed an online 25question Ethics Review as part of the licensing or renewal process. To date, we are 8,000 plus Ethics Reviews into exploring whether Utah educators understand-and practice--appropriate ethical standards for teachers. The Ethics Review is called a review because the educator takes the *review* and, if he completes it, cannot fail the review.

Review takers for the June 2012 renewal period would, perhaps, benefit from a summary of the previous year's responses. Some sample comments might be informative also. Finally, we will provide some sample questions to pique your ethical educator IQ–and, we hope, provide some lively discussion in faculty meetings at the first of the year.

The feedback section of the Ethics Review asked (1) if the Review was easy to use. Most responses said "yes" or "of course, you just click and point." A few had problems with being "timed out" (I guess those Review-takers were too careful and thorough!). Several responses suggested telling Review-takers in advance how long the Review would take (about 20 minutes) and/or providing the number of questions in the Review: 25.

- (2) A second feedback question asked if the questions were relevant. Most Review-takers said they were relevant; a few said they were too "simple" or too "common sense." The most common comment was that the scenarios seemed directed to secondary teachers-and the responders were elementary or even early childhood educators. We will remedy this with additional questions. Educator ethics should not be specific to teachers new to the profession or to those teaching high school physics or to those who coach in addition to regular teaching assignments or to junior high school music teachers. Ethical standards apply to all licensed educators.
- (3) The final feedback question asked the Review-taker for any additional comments.. One reflected that the questions were "challenging and engaging." Another said that some questions were "confusing." Another comment was that the Review-taker "learned a lot." In the next renewal cycle, we will clarify ambiguous questions and add scenarios specific to elementary and early childhood educators. One current and concerning educator ethics issue is how licensed educators should manage money and funds directed to a school or school district. Should a licensed educator only "do what she is told" or should she accept responsibility for personally managing school funds consistent with written district policies or verbal district

directives and good financial practices?

Consider (and review with your colleagues!) the following *new* sample ethics questions—some may pop up on a future Ethics Review. Choose the *best* answer for each question:

- (1) Many parents of kindergarten students want to give their children's teacher holiday or teacher appreciation presents. This practice is fine (and appreciated by teachers!) so long as:
- A. Teacher does not solicit gifts;
- B. Gifts are "nominal" in value; C. Gifts would not influence teacher to favor some students over others; or
- D. All of the above
- (2) A high school drivers education teacher was recently instructed by her principal to use the drivers education vehicle *only* as prescribed by district policy. Drivers ed teacher is also a volleyball coach and in the past she has used the drivers ed. vehicle to drive players to games, pick up uniforms and pick up food and candy for the concession stand which operates during volleyball games and benefits volleyball program. What should she do now that she has been reminded of appropriate use of the vehicle by the principal?

A. Continue to use the vehicle for the volleyball team.
Volleyball coach does not have a vehicle large enough to carry the concession items.

Recent Education Cases	2
UPPAC Case of the Month	2
Your Questions	3
Ethics Review, cont.	3



## December UPPAC CASES

The Utah State Board of Education revoked Randall E. Carr's Utah Educator License. The revocation results from Mr. Carr allegedly engaging in inappropriate conduct and making off-color comments to students and staff.

Steven North's Utah Educator License was suspended due to physical and verbal threats to a student.

#### **Recent Education Case**

December, the 9<sup>th</sup> Circuit decided what it means to be a "qualified" individual with a disability under the ADA. In Johnson v. Board of Trustees, F.3d (9th Cir. Dec. 8,2011), the court reviewed the case of an Idaho teacher who failed to renew her license because the summer she was taking the required classes to renew, she suffered a major depressive episode which rendered her unable to complete the classes. The teacher applied to the School Board for an authorization to teach that year without a license while she worked toward getting it but the Board denied her request. The school district terminated her because she did not have a current license. She then filed a complaint against the Board alleging disability discrimination, arguing she should have been able to teach because she was a "qualified individual with a disability" and should have been provided ADA accommodations by the State Board in requesting more time to pass her tests get her license.

In analyzing whether the teacher was a

"qualified individual", the court referenced the EEOC regulations which provide that a "qualified individual with a disability is one who satisfies the requisite skills, experience, education, and other job related requirements of the employment position such individual holds or desires, AND who, with or without reasonable accommodation, can perform the essential functions of such position." The court looks at this regulation as a 2 part-test: 1. Does the individual satisfy the requisite skills, etc., and 2. Can the individual perform the job with or without reasonable accommodations. The Board argued that the teacher's lack of legal authorization to teach rendered her unqualified under the first step of the inquiry. The teacher argued that she could have had legal authorization if the Board had granted her request for accommodation. The court said, "Initially, we note that the first step of the qualification inquiry, unlike the

second step, contains no reference to reasonable accommodation. If the EEOC had intended to require employers to provide reasonably accommodation to ensure that disabled individuals can satisfy the job prerequisites, in addition to the essential job functions, it presumably could have said so in the regulation. That the EEOC declined to include any reference to reasonable accommodation in the first step suggest that such omission was deliberate."

In sum, when a teacher does not meet the prerequisite requirements for a job, accommodations are not necessary to help the individual meet those requirements.

### **UPPAC** Case of the Month

School resources are available to use for the benefit of the teachers and the students. Laptops, ipads, kindles, radios—anything purchased by the district or purchased by the educator who is then reimbursed by the district—is the property of the school. Even when the educator donates money to the district's foundation for a specific use, that money becomes district foundation money, not the educator's personal play money.



It is important for educators to become familiar with the district's acceptable use policy. Most districts outline acceptable use of

school equipment. Familiarity with this policy will help educators avoid the kind of trouble Mrs. Smith (names changed to protect confidentiality) got into when she purchased a 32" TV/ DVD and took it home to "store it." Mrs. Smith also purchased a kindle and an ipad with school money that had only personal downloads, not educational programs that could be used for her Elementary School Special Education classes. Among other things, Mrs. Smith violated Rule 277-515-3D(3)(g): "[The professional educator ] shall not use school property, facilities, or equipment for personal enrichment, commercial gain, or for personal uses without express supervisor permission."

Mr. Johnson also violated his district's acceptable use policy when he used his school laptop to access pornography at his home. Whether you're at school, at home, or on vacation in Hawaii, if you acquired your laptop with district money, it is not yours, and accessing inappropriate materials on it could cost you your job and possibly your license.

While most district encourage educators to use equipment for personal use to become familiar with the equipment, there should never be a question of whether the equipment is used more for personal use than for school use. If that question arises, it is more than just a district policy violation; it is also a professional ethics violation and may result in licensing action

Utah State Office of Education Page 2

### (Ethics Review, cont.)

- B. Continue to use the vehicle as she has previously; she will change her behavior if warned in writing by the principal.
- C. Change her practice immediately to comply with principal's directive. If she does not know the school policy for the use of drivers ed vehicles, she should find the information.
- D. Conclude that the principal does not like girls' athletics. She decides to contact the school district office for permission to use the vehicle for girls' volleyball.
- (3) A 4<sup>th</sup> grade teacher is giving her students the CRT (standardized) test. She has one student in her class (Jane) who has not been designated as a student with a disability and does NOT have an IEP. However, teacher knows that Jane will have trouble reading the questions on the test, though she may know the answers. Teacher should:
- A. Follow the same rules and procedures for giving the test to Jane as she does with other students.
- B. Read the test questions to Jane, but only if Jane asks teacher to.
- C. Quietly allow other students in the class

- to read the questions to Jane.
- D. Keep Jane after class to review the test with her individually.
- (4) A 6<sup>th</sup> grade student is consistently disrespectful and belligerent to his teacher. He swears at the teacher and is often disruptive in class. It would NOT be a violation of educator ethics if the teacher...
- A. Slaps the student after a third warning. B. Slaps the student's face if the student uses one more swear word.
- C. Holds the student's arm to keep the student from hurting another student.
- D. Gently swats the student.
- (5) A 9<sup>th</sup> grade math teacher and coach observes his students bullying a student, calling him names and taunting him during class and during class changes. Teacher/Coach
- A. Should not intervene, "boys will be boys," especially junior high school boys. B. Should not intervene; if the student wants to be an athlete, he needs to learn to be tough and stick up for himself.

- C. Decide to talk to the other students' parents at parent/teacher conferences—in two weeks.
- D. Stop the bullying and name calling immediately. Inform students and parents that further name calling or bullying will result in students being cut from the team—and possible additional disciplinary action.
- (6) Students are requesting that a 7<sup>th</sup> grade math teacher be their Facebook "friend." Teacher responds, "no, we don't have that relationship." One student is insistent, teacher should: A. Be very firm with the student that they can communicate during school time or on the school social networking site, but teacher will not "friend" students; perhaps contact student's parents.
- B. Agree to be the student's friend, but never exchange personal information. C. Ask colleagues how they respond to similar requests from students.
- D. Agree to be the student's "friend" because other teachers think it is OK.

### **Your Questions**

- Q: If a student is expelled in one school district and our district decides to enroll the student, can we give him a "one strike you're out" conditional admission?
- A: Yes, state law provides that schools and district do not have to enroll a student who has been expelled in the previous 12 months. If you decide to accept a student for enrollment despite the expulsion, you can decide the most appropriate placement for the student, and you can set conditions for acceptance, including a "one-strike-you're-out" condition.
- Q: What if the student wasn't expelled, mom and dad share physical and legal custody according to the official court custody papers, but mom hasn't been in the kids' lives for years—is not on the registration papers or emergency contact information—can mom come and pick up the students from school without dad's permission?

#### What do you do when...?

A: Unless there is a schedule outlining the days or the week that each parent has custody, joint physical and legal custody mean both parents have a right to be with the children. If mom shows

up one day and wants to check her student out of school and there is no court order overriding the custody order granting joint custody, mom has a right to take the kids, even over dad's protests. Refer dad to the courts to get a modification

of the custody order or a schedule stating which days each parent gets the kids.

Q: I have read about outbreaks of childhood diseases in schools-everywhere! Do schools require students to be immunized?

A:Yes, Utah law requires students to have at least one dose of immunizations required by the State Health Department before they start school. This applies to students of all ages and situations. Or, parents who have a sincere and legitimate personal objection to immunizations for their chil-

dren must obtain the exemption form from a health department and complete and submit the form. Did you know that schools receive money from the state for every student that is properly immunized?

Q: My 2nd grade son's teacher asked her to help another 2nd grader (boy) use the restroom. My son did as he was asked, then he was accused of doing naughty things with the boy! I am flabbergasted! Is there something wrong with this practice? (see p.4)

Utah State Office of Education Page 3

Utah State Office of Education 250 East 500 South P.O. Box 144200 Salt Lake City, Utah 84114-4200

Phone: 801-538-7832

Fax: 801-538-7768

Fmail: heidi alder@schools utah

Email: heidi.alder@schools.utah.gov





The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

## **Your Questions Cont.**

(Continued from page 3)

A: There are no rules or laws about students helping other students in the restroom. And, clearly, if a teacher thinks there was "child abuse" by a person of any age at school, the teacher should report it. Now that this practice has proved to be a problem in this school, it seems that teachers should rethink the practice. Teachers could have aids or even administrators help a child use the restroom if the teacher thinks the child needs it.

Q: What is the deadline for students' eligibility to start kindergarten in Utah?

A: Students must be 5 on or before September 1 in order to start public school in Utah. It doesn't matter if a child started in another state or country, and is now coming to Utah. Still the student should not be registered in public school (including charter schools) if he was not 5 before September 1. Nothing prevents a school from enrolling a student at a grade beyond kindergarten (if student is ready as determined by the school) once the student is eligible for public school.

Q: My 3rd grade daughter's class says the "Pledge of Allegiance" every day at the beginning of school. Is this required by state law?

A: Yes, elementary-age students are directed to say the Pledge every day; secondary students at least once per week.

Q: Help! My son's fifth grade class has 35 students. Isn't there a class size cap

in state law?

A: No, there are no caps on class size in Utah law. Some states have these caps. Some Utah school districts and charter schools set class size caps or guidelines. There is professional guidance in Utah Special Education (IDEA) Rules that establishes appropriate class sizes for various special education classes.



Page 4

Utah State Office of Education